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phone conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

20 Cr. 162 (JPO)

5 SCOTT ROBINSON,
6 SCOTT MANGINI,

Defendants.

-----x

8 April 7, 2020
9 11:00 a.m.

10 Before:

11 HON. J. PAUL OETKEN,

12 District Judge

13
14
15 APPEARANCES

16 AUDREY STRAUSS

Acting United States Attorney for the
Southern District of New York

17 BY: SARAH MORTAZAVI

18 BENET J. KEARNEY

Assistant United States Attorneys

19 WILLIAM M. BUTLER, JR

20 Attorney for Defendant Robinson

21 GOODWIN PROCTER, LLP (NYC)

Attorneys for Defendant Mangini

22 BY: WILLIAM J. HARRINGTON

23 JEFF MARCUS

24 ALSO PRESENT: MOHAMMED AHMED, Pretrial Services

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1 (Case called; all parties appearing telephonically)

2 THE DEPUTY CLERK: Starting with the government,
3 counsel, please state your name for the record.

4 MS. MORTAZAVI: Good morning, your Honor. This is
5 Sarah Mortazavi for the government, and also on the line for
6 the government is Benet Kearney.

7 THE COURT: Good morning.

8 MS. KEARNEY: Good morning.

9 THE COURT: Counsel for Mr. Robinson?

10 MR. BUTLER: Good morning, your Honor. For the
11 record, my name is William Butler. I am retained by
12 Mr. Robinson. Mr. Robinson is also present.

13 THE COURT: Good morning.

14 And counsel for Mr. Mangini?

15 MR. HARRINGTON: Good morning, your Honor. It is Bill
16 Harrington. My co-counsel Jeff Marcus is also on the line, as
17 is our client Scott Mangini.

18 THE COURT: Good morning.

19 Is the pretrial services officer also on the line?

20 OFFICER AHMED: Yes, your Honor. Mohammed Ahmed on
21 behalf of Pretrial Services.

22 THE COURT: I want to confirm that the court reporter
23 is understanding us and is taking this down.

24 OFFICIAL REPORTER: Yes, your Honor. Good morning.

25 THE COURT: I am Judge Paul Oetken and I am the Judge

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1 who has been assigned to this case. This is both defendants'
2 first appearance before a Judge in this court. I understand
3 that both defendants were arrest on March 9th and presented on
4 the indictment before magistrate judges in Florida. Today we
5 will be proceeding, as follows: First, I have a few
6 preliminary matters regarding this remote proceeding. I am
7 confirming that each of the defendants has waived his right to
8 be present for a live hearing and that it is appropriate to
9 proceed by telephone conference. Second, we will conduct the
10 arraignment as to each of the two defendants. Third, we will
11 address bail. And fourth, we will address scheduling for the
12 case going forward.

13 I just want to confirm one more time that each of you
14 can hear me. Ms. Mortazavi?

15 MS. MORTAZAVI: Yes, your Honor.

16 THE COURT: And Mr. Butler?

17 MR. BUTLER: Yes, your Honor.

18 THE COURT: Mr. Robinson?

19 DEFENDANT ROBINSON: Yes, your Honor.

20 THE COURT: Mr. Harrington?

21 MR. HARRINGTON: Yes, your Honor.

22 THE COURT: And Mr. Mangini?

23 DEFENDANT MANGINI: Yes, your Honor.

24 THE COURT: Thank you.

25 Ordinarily, of course, this proceeding would be

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1 happening live in the courtroom with the defendants and counsel
2 for the parties present. However, due to the public health
3 emergency created by the COVID-19 pandemic, we are proceeding
4 remotely by telephone conference and we are doing that pursuant
5 to the authority in Section 15002 of the CARES Act and the
6 standing orders issued by our Chief Judge of the Southern
7 District of New York pursuant to that Act, as well as Rule
8 10(b) of the Federal Rules of Criminal Procedure. Under the
9 present circumstances, I find that proceeding by telephone
10 conference, subject to the defendants' waiver of physical
11 appearance, it is necessary and appropriate that video
12 telephone conferencing is not reasonably available at the
13 present time and I authorize the use of telephone conferencing
14 for purposes of this proceeding.

15 I have received and accepted written waivers of the
16 right to be present signed by each of the defendants and their
17 counsel and I just want to confirm with defense counsel that
18 each defendant was advised of his right to be present at this
19 arraignment and voluntarily gave up that right.

20 First, is that accurate as to Mr. Robinson,
21 Mr. Butler?

22 MR. BUTLER: Yes, your Honor; that's accurate.

23 THE COURT: And as to Mr. Mangini Mr. Harrington?

24 MR. HARRINGTON: That's correct, your Honor. He has
25 been advised and he waives his right to be present.

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1 THE COURT: All right. Thank you.

2 We will proceed to the arraignment of Mr. Robinson and
3 I will start with a few questions for Mr. Butler. Mr. Butler,
4 did you provide Mr. Robinson with a copy of the indictment?

5 MR. BUTLER: Yes, your Honor.

6 THE COURT: And did you explain the charges to him and
7 do you believe he understands the nature of the charges?

8 MR. BUTLER: Yes, your Honor. I have explained the
9 charges. I believe he does understand and, your Honor, we will
10 waive formal reading of the indictment, if that suits the
11 Court.

12 THE COURT: Okay. That's fine. Thank you.

13 And did you discuss with the defendant the plea that
14 he would like to enter?

15 MR. BUTLER: Yes, your Honor. We will enter a plea --
16 or I will enter a plea of not guilty for Mr. Robinson.

17 THE COURT: All right. Thank you.

18 Just to confirm with Mr. Robinson, is it correct that
19 you wish to plead not guilty at this time?

20 DEFENDANT ROBINSON: Yes, your Honor.

21 THE COURT: Thank you. A plea of not guilty is
22 entered for Mr. Robinson.

23 I will turn to the arraignment of Mr. Mangini.
24 Starting with Mr. Harrington, have you provided a copy of the
25 indictment to Mr. Mangini? Do you believe he understands the

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1 nature of the charges?

2 MR. HARRINGTON: Yes, your Honor.

3 THE COURT: Has the defendant agreed that he did not
4 need to have a Judge publicly read the indictment aloud to him
5 at this time?

6 MR. HARRINGTON: He has. He does not need it read.

7 THE COURT: All right. And did you discuss with the
8 defendant the plea he would like to enter?

9 MR. HARRINGTON: I did, and he is prepared to enter a
10 not guilty plea.

11 THE COURT: Thank you. And just to confirm,
12 Mr. Mangini, is it correct that you wish to plead not guilty at
13 this time?

14 DEFENDANT MANGINI: Yes, your Honor.

15 THE COURT: Thank you.

16 That completes the arraignment of the two defendants
17 who pleaded not guilty. I will start with counsel for the
18 government on bail. Have the parties reached agreement with
19 respect to bail, Ms. Mortazavi?

20 MS. MORTAZAVI: Yes, your Honor. This is Sarah
21 Mortazavi for the government.

22 The parties have received the pretrial services
23 reports with the bail recommendation. I have reached out to
24 defense counsel prior to this hearing with a proposed bail
25 package for each defendant that largely mirrors those

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1 recommendations and I have not yet heard back as of the time of
2 this conference whether there is agreement.

3 THE COURT: All right.

4 MS. MORTAZAVI: I am prepared to set forth in the
5 record the government's recommendation as to bail.

6 THE COURT: Why don't you go ahead and do that.

7 MS. MORTAZAVI: Certainly.

8 Beginning with Mr. Robinson, the government would
9 propose the following package: A \$100,000 bond signed by two
10 financially responsible persons; supervision as directed by
11 pretrial services; the defendant to surrender all travel
12 documents and make no new applications; travel to be restricted
13 to the Southern District of New York, Eastern District of New
14 York, Middle District of Florida and transit points in between;
15 the defendant to submit to substance abuse testing and
16 treatment as directed by pretrial services; the defendant to
17 have mental health evaluation and treatment as deemed necessary
18 by Pretrial Services, the defendant to have no contact with the
19 defendants listed in this case or any of the related cases that
20 arose out of the same investigation which include 20 crim 160,
21 United States v. Navarro, 20 crim 161, United States v. Sarah
22 Izhaki and Ashley Lebowitz, and 20 crim 163 United States v.
23 Grasso, *et al*; the defendant to have no contact with race
24 horses without supervision of the third-party owner at the
25 premises where the horse is stabled; and the defendant to

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1 refrain from conduct as alleged in the indictment.

2 THE COURT: Did you say no contact with other
3 defendants in those cases, period? Or outside the presence of
4 counsel?

5 MS. MORTAZAVI: I neglected to mention outside the
6 presence of counsel but that was the intent of that particular
7 requirement.

8 THE COURT: Okay. Anything else as to Mr. Robinson?

9 MS. MORTAZAVI: Nothing else as to Mr. Robinson.

10 THE COURT: Why don't I go ahead and hear from counsel
11 for Mr. Robinson as to whether you agree with those conditions.

12 MR. BUTLER: Your Honor, for the record, William
13 Butler here.

14 I believe those conditions are generally fair and we
15 don't object, although I have not spoken with Mr. Robinson
16 because we just received these conditions prior to our hearing
17 beginning this morning. But, given the fact that I haven't
18 spoken to him, I still believe that these conditions are very
19 close to what was given when he was released in the Middle
20 District of Florida, I think they'll be fair.

21 THE COURT: All right.

22 Well, they sound reasonable to me and assuming that
23 they're essentially on consent, I will adopt those conditions.
24 If it turns out that there is some point of disagreement, you
25 can come back to me within the next few days and I will address

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1 any disagreement. But, those all sound right to me and I will
2 adopt those as conditions of the defendant's release on bail.
3 And just so you both understand, the conditions that I adopt
4 are conditions that will apply through this case, and any
5 violation of those conditions could result in your detention
6 for the remainder of the case going forward.

7 Ms. Mortazavi, would you like to address the proposed
8 conditions as to Mr. Mangini.

9 MS. MORTAZAVI: Certainly, your Honor. And, again,
10 these largely mirror the recommendations of Pretrial Services
11 which also reflect the conditions previously imposed when the
12 defendant was first presented.

13 So, the government would propose the following
14 package: A \$100,000 bond signed by two financially responsible
15 persons; supervision as directed by Pretrial Services; the
16 defendant to surrender all travel documents and make no new
17 applications; travel to be restricted to the Southern District
18 of New York, Eastern District of New York, Southern District of
19 Florida and transit points in between; the defendant to submit
20 to substance abuse testing and treatment as directed by
21 pretrial services; the defendant to have no contact with the
22 defendants in any of the related cases -- I will not repeat
23 them again unless the Court would wish me to do so -- or his
24 co-defendant outside the presence of counsel; the defendant to
25 reside at his current address in Boca Raton, Florida; the

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1 defendant to have no contact with race horses without
2 supervision of the third-party owner of the premises where the
3 horse is stabled; and the defendant to refrain from conduct as
4 alleged in the indictment.

5 There are no further conditions proposed by the
6 government.

7 THE COURT: All right.

8 Mr. Harrington?

9 MR. HARRINGTON: Thank you, your Honor.

10 The conditions are fine, we consent to them with one
11 caveat. We would just ask that the residency requirement be
12 one that allow Mr. Mangini to move, with notice to the pretrial
13 services officer. The reason for that is that his lease is
14 coming up soon and it is very likely that he will have to get a
15 new lease somewhere else. I did communicate with the
16 government about this -- I'm sorry, your Honor.

17 THE COURT: Do you know if that's also going to be in
18 Boca Raton?

19 MR. HARRINGTON: That's the goal. It is just that I
20 don't think he has yet identified the location that he will
21 move to.

22 MS. MORTAZAVI: The government has no objection to
23 that amendment to the condition.

24 THE COURT: All right. With that amendment, the
25 conditions with respect to had Mr. Mangini are adopted and I

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1 will sign the bail order indicating that those are the
2 conditions of pretrial release on bail.

3 If there is nothing else with respect to bail, we will
4 turn to scheduling. The government has submitted a status
5 letter on April 3rd which gives an overview of the case and
6 describes the categories of discovery it expects to produce. I
7 just wanted to start by confirming that defense counsel have
8 reviewed the government's letter; is that correct, Mr. Butler?

9 MR. BUTLER: Your Honor, I have not reviewed that
10 letter. I apologize. I haven't seen it in my e-mail.

11 THE COURT: Oh. Okay. It was filed on the ECF
12 system, that's the electronic docket. Do you have access to
13 that?

14 MR. BUTLER: Yes, your Honor. I do.

15 THE COURT: Okay. If you go on to that you will see
16 it. I think there was a *pro hac vice* motion, it might be that
17 that wasn't granted until after.

18 MR. BUTLER: That may very well be the case, your
19 Honor, because I am very well familiar with Pacer.

20 THE COURT: Okay. Great.

21 And Mr. Harrington, have you seen that letter?

22 MR. HARRINGTON: I have, your Honor, and I have
23 reviewed it.

24 THE COURT: So, in any event, I am going to ask the
25 government just to highlight, in general, categories of

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1 discovery and its expected timing for production. I will also
2 note that the parties have agreed on a protective order
3 governing discovery and I signed that protective order
4 yesterday, April 6th.

5 I will now ask the government if there is anything you
6 would like to add about the case generally. And, as I
7 mentioned with respect to discovery, if you would please
8 provide the general description proposed discovery and your
9 estimated timing.

10 MS. MORTAZAVI: Certainly, your Honor. This is Sarah
11 Mortazavi, for the record.

12 The defendants here were indicted as a result of an
13 investigation into race horse doping and the defendants, in
14 particular, were indicted in February of this year in
15 connection with multiple conspiracies that they engaged in both
16 together and separately related to their manufacture, creation,
17 sale, and distribution of adulterated and misbranded
18 performance enhancing drugs intended for use in doping race
19 horses as is set forth in our letter that the Court just
20 mentioned a minute ago.

21 With respect to discovery, as part of this
22 investigation, law enforcement agents had conducted multiple
23 searches of physical premises that include searches of premises
24 associated with Mr. Robinson conducted in September of last
25 year, as well as premises connected with both Mr. Robinson and

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1 Mr. Mangini that were conducted on the day both of the
2 individuals were arrested, that is, March 9th of this year. In
3 connection with those searches, the government has seized a
4 number of electronic devices containing many terabytes of
5 computer data that is still being processed for copy imaging
6 and later review. The government has also, in connection with
7 those searches, taken multiple photos, physical documents,
8 physical items including the misbranded and adulterated drugs
9 that are at the heart of the indictment and other physical
10 items related to the charged case.

11 The government has also obtained a smart phone from
12 Mr. Robinson that contains, among other things, records of
13 calls, pictures, texts and WhatsApp messages relevant to the
14 case. We also obtained business records including archived web
15 pages of various direct-to-consumer websites that were operated
16 in connection with the conspiracies, shipping records, payments
17 data, and other records that relate to the defendant's
18 businesses.

19 The government also has notices and informing letters
20 that were previously provided to the defendants by regulatory
21 authorities including the Food and Drug Administration and the
22 Florida Department of Health related to their creation of
23 adulterated and misbranded drugs.

24 The government also has the consent of two e-mail
25 accounts associated with Mr. Mangini's businesses and separate

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1 from those law enforcement reports and records of undercover
2 searches -- pardon me -- of undercover purchases that were
3 conducted from these websites as well as other aspects of the
4 investigation.

5 With respect to timing, the government anticipates
6 making an initial production of documents to both defendants at
7 some point this week and that initial production is currently
8 being prepared and will consist of FedEx records; search
9 warrants obtained by the government in this case; the phone
10 extraction that I mentioned a minute ago related to
11 Mr. Robinson; archived web pages from the direct-to-consumer
12 websites; the letters and other records of the regulatory
13 agencies I mentioned; and inventory notices and photographs of
14 searches that were conducted of the physical premises.

15 The government also intends to produce, on a rolling
16 basis, identified data from the electronic devices that were
17 seized and that are in the process of being searched, as well
18 as additional search warrants and agent reports, but the bulk
19 of the discovery the government intends to produce in the
20 future following this initial production will be the identified
21 electronic data from those devices.

22 I will pause there, your Honor, to see if there are
23 any questions.

24 THE COURT: So, I understand the first production is
25 anticipated this week and then rolling production. Is there an

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1 estimate of when the bulk of that rolling production would be
2 completed?

3 MS. MORTAZAVI: This is Sarah Mortazavi again.

4 It is a little difficult to estimate, your Honor, with
5 all candor, particularly considering the current situation
6 which has reduced staffing certainly at the U.S. Attorneys
7 office and at the federal agencies that are involved in the
8 investigation and so I will say that the electronic data that
9 has been seized are comprised of multiple terabytes of
10 information and it is a little difficult at this stage to know
11 how quickly the review will be able to proceed, particularly
12 considering the uncertainty with the time it will take to go
13 back to what I will call "business as usual."

14 THE COURT: Right.

15 MS. MORTAZAVI: What I would propose, your Honor --
16 and the government does intend to produce on a rolling basis
17 and on the sooner end of what it can -- the agent reports,
18 additional search warrants, and any other data it can produce
19 expeditiously. But, what I would propose is that we, today,
20 schedule a second conference in this matter, perhaps three or
21 four months from today's date, at which point the government
22 will be able to provide an update on discovery and I believe
23 that at that second conference the parties will be able to
24 identify which motions, if any, they wish to make. Although
25 the identified data is going to take some time to review and

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1 produce, the government is confident it will be able to produce
2 everything including search warrants that would inform the
3 decision of whether or not to file suppression motions. And I
4 think that decision can be made even if relevant data is still
5 being produced to the defendants.

6 THE COURT: So you are proposing a conference in three
7 or four months and at that conference then setting a schedule
8 for potential motions?

9 MS. MORTAZAVI: Correct, your Honor.

10 THE COURT: All right.

11 I would like to hear from counsel for each of the
12 defendants as to scheduling. In some cases I go ahead and set
13 a trial date and a motion schedule. In a case like this,
14 particularly given the current kind of semi-lockdown situation
15 we are in it is harder, I think, to do that. So, I guess I
16 would like to hear from the defense as to how you propose going
17 forward. I am fine with what the government has proposed, just
18 scheduling a conference in three or four months if that's your
19 preference. But, if you have something else in mind, I am also
20 happy to hear that. I will start with Mr. Butler.

21 MR. BUTLER: Your Honor, William Butler here.

22 I agree with the government's proposal.

23 THE COURT: Okay.

24 And Mr. Harrington?

25 MR. HARRINGTON: Thank you, your Honor. Yes, I think

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1 that proposal makes sense as well.

2 THE COURT: All right. So, that's fine with me. I
3 think that makes sense. I won't set a trial date or a motion
4 schedule at this point but I will set a conference in three or
5 four months and I guess at this point I will put it down as a
6 regular conference and if there is a request to, you know,
7 excuse the physical presence of either or both of the
8 defendants down the line, we can address that later in advance
9 of the conference.

10 Is that okay with everybody?

11 MR. BUTLER: Yes, your Honor.

12 MR. HARRINGTON: That sounds great.

13 THE COURT: All right. Give me a minute.

14 (pause)

15 THE COURT: So, I would suggest July 29th. I will ask
16 each of you if you have a problem with July 29th in the
17 afternoon, let's say 3:00? I will start with Ms. Mortazavi.

18 MS. MORTAZAVI: No objection from the government.
19 Thank you.

20 THE COURT: And does July 29th at 3:00 p.m. work for
21 Mr. Butler?

22 MR. BUTLER: Yes, your Honor, it does.

23 THE COURT: And Mr. Harrington?

24 MR. HARRINGTON: Yes, that date works. Thank you,
25 Judge.

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1 THE COURT: All right. The next conference in this
2 case will be July 29th, 2020, at 3:00 p.m. The default will be
3 that it's in courtroom 706 at 40 Foley Square. If that changes
4 and it ends up being a video or audio conference, I will let
5 you know well in advance. And if there is any request to waive
6 presence of defendants you will let me know, please, at least
7 three days before that. I guess two days before that is fine.

8 That covers everything I had to address. I will ask
9 each of you whether you had anything else you wanted to raise.
10 And I will start with counsel for the defendants, Mr. Butler,
11 anything else?

12 MR. BUTLER: No, your Honor. Thank you.

13 THE COURT: And Mr. Harrington?

14 MR. HARRINGTON: Your Honor, there is one small matter
15 which is that Mr. Marcus needs to file *pro hac* papers. He
16 actually currently is admitted *pro hac* in another matter so we
17 weren't sure if --

18 THE COURT: Yes.

19 MR. HARRINGTON: -- if in light of the pandemic it
20 would be okay if he files the papers without all the usual
21 process around it.

22 THE COURT: It is fine with me. I just have to check
23 with the powers at be in the Clerk's office as to whether I can
24 get that done. So, I will ask my courtroom deputy Mr. Hampton
25 to check on whether we can just do it as is or if we need

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1 anything else and he can let you know whether we need more than
2 we already have, other than the actual requests on ECF.

3 MR. HARRINGTON: Thank you, your Honor. I appreciate
4 that.

5 THE COURT: All right. And anything else from the
6 government?

7 MS. MORTAZAVI: This is Sarah Mortazavi again.

8 The government would ask that we exclude time between
9 today's date and the next conference date to facilitate the
10 production and review of discovery and discussions with counsel
11 regarding any pretrial motion.

12 THE COURT: Is there any objection to exclusion of
13 time, Mr. Harrington?

14 MR. HARRINGTON: No, there is not.

15 THE COURT: And Mr. Butler?

16 MR. BUTLER: No, your Honor. No objection.

17 THE COURT: All right, I grant the application and I
18 exclude time under the Speedy Trial Act from today's date to
19 the date of the next conference which is July 29th, 2020. I
20 find that the ends of justice served by granting this
21 continuance outweigh the interest of the public and the
22 defendants in a speedy trial based on the time for production
23 of discovery and review of discovery, time for defendants to
24 consider and prepare any motions, and potentially time for the
25 parties to discuss possible disposition of the case. Based on

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1 those considerations, I exclude time from today's date to July
2 29, 2020 under the Speedy Trial Act under 18 U.S.C.
3 Section 3161(h)(7)(A).

4 If there is nothing else -- if anybody has anything
5 else, let me know in the next few seconds. (pause)

6 Okay. Thank you, everyone. Court is adjourned.

7 o0o